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## PROPOSED ORDER

C. **ORDERED** that the Recommended Order in the Proposed Decision be, and hereby is, **AMENDED** by deleting it in its entirety and replacing it with the following:

"That a final order be entered pursuant to which it is:

**ORDERED** that the Respondent's Maryland mortgage originator license be **REVOKED**;

**ORDERED** that Respondent shall pay to the CFR, by cashier's or certified check made payable to the "Commissioner of Financial Regulation" a civil penalty in the amount of \$5,000 for the violation of law related to the [REDACTED] loan and a civil penalty in the amount of \$5,000 for the violation of law related to the [REDACTED] loan, equaling **CIVIL PENALTIES IN THE TOTAL AMOUNT OF \$10,000**, within fifteen (15) days from the date that this Proposed Order becomes a final decision of the Commissioner; and

**ORDERED** that Respondent shall send payment for the civil penalties to the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Baltimore, Maryland 21202, Attn: Enforcement Action Collections."

Pursuant to Maryland Code Ann., State Government § 10-220, the Commissioner sets forth the reasons for modifying the Recommended Order as follows:

1. The Commissioner concludes as a matter of law that the actions of Respondent in having [REDACTED] pay to her \$400 purportedly for an application fee constituted conduct that demonstrated unworthiness, bad faith, dishonesty, and qualities that indicate that the business of the licensee has not been or will not be conducted honestly, in violation of Md. Code Ann., Fin. Inst. § 11-615(a)(5). Moreover, this dishonest activity also violated Md. Code Ann., Fin. Inst. §§ 11-615(a)(3) (by, in connection with a mortgage loan application transaction, engaging in illegal or dishonest activity), and (a)(4) (by Respondent's breach of her duty of good faith and fair dealing to [REDACTED] under COMAR 09.03.09.04).

The ALJ found, based on the evidence and testimony, that the Respondent deposited [REDACTED] funds into her personal account. Moreover, "[d]ocumentation from 1<sup>st</sup> Metropolitan Mortgage and testimony from Ms. Crider show that 1<sup>st</sup>


Metropolitan does not permit its employees to collect up-front or advance fees from loan applicants.” (Proposed Decision at 5). [REDACTED] alleged that the Respondent took no action on her behalf in connection with procuring a loan—and Metropolitan ended up refunding [REDACTED] the \$400 in apparent agreement with [REDACTED]. *Id.*

The Commissioner finds that the mere fact that there was no evidence before the ALJ “concerning what the Respondent did with the \$400 paid by [REDACTED]” is immaterial to finding a violation of applicable law. *Id.* All of the evidence supports a finding that the Respondent acted dishonestly by taking [REDACTED] money, placing it in her personal account (in essence pocketing the funds), doing nothing in return for the money taken, and putting her employer in the position where it determined it was obligated to refund the money. We view this dishonest behavior as a serious violation of law requiring sanction.

2. The Commissioner determines it necessary to set a deadline by which time the payment of the civil penalties, and provide the Respondent with instructions on how and where to make the required payments.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2). Unless written exceptions are filed

within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.

  
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Sarah Bloom Raskin  
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

v.

GAYLE MARIE MORRISON,

RESPONDENT

\* BEFORE D. HARRISON PRATT,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE NO: DLR-CFR-76A-10-13010

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PROPOSED DECISION

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

STATEMENT OF THE CASE

On March 25, 2010, the Maryland Commissioner of Financial Regulation (CFR), Department of Labor, Licensing and Regulation (DLLR), charged Gayle Marie Morrison (Respondent) with violation of the Maryland Mortgage Originator's Law (MMOL), section 11-601 *et seq.* of the Financial Institutions Article, Annotated Code of Maryland. On March 26, 2010, the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing. The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a proposed order.

On May 26, 2010, I held a hearing at the OAH in Hunt Valley, Maryland. Jedd Bellman, Staff Attorney for the Attorney General, represented the CFR. The Respondent represented herself and participated by telephone.

I heard this case pursuant to Md. Code Ann., Fin. Inst. § 11-616 (Supp. 2010). Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§

10-201 *et seq.* (2010), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

### ISSUES

The issues are:

1. Whether the Respondent violated the MMOL, Md. Code Ann., Fin. Inst. § 11-615(a)(3), § 11-615(a)(4) or § 11-615(a)(5).
2. If there was a violation, what if any sanction are appropriate.

### SUMMARY OF THE EVIDENCE

#### Exhibits

The CFR submitted the following documents, which I admitted into evidence:

- CFR Ex. 1 Notice of Hearing to the Respondent, dated October 6, 2009.
- CFR Ex. 2 Certified Mail return receipt "Unclaimed."
- CFR Ex. 3 Delegation Letter to OAH.
- CFR Ex. 3A Certified Mail return receipt "Unclaimed."
- CFR Ex. 4 Investigation Report (compilation).
- CFR Ex. 5 Licensing Information (AS400).
- CFR Ex. 6 Subpoena with Cover Letter.
- CFR Ex. 7 [REDACTED]: Complaint.
- CFR Ex. 7A [REDACTED]: Checks remitted to Respondent.
- CFR Ex. 7B [REDACTED]: 1<sup>st</sup> Metropolitan Mortgage – Solicitations and Correspondence.
- CFR Ex. 7C [REDACTED]: Letter to Respondent from 1<sup>st</sup> Metropolitan Mortgage.
- CFR Ex. 7D [REDACTED]: Refund from 1<sup>st</sup> Metropolitan Mortgage with Cover Letter.
- CFR Ex. 8 [REDACTED]: Check remitted to Respondent.
- CFR Ex. 8A [REDACTED]: Letter from 1<sup>st</sup> Metropolitan Mortgage about Complaint.
- CFR Ex. 8B [REDACTED]: Refund from 1<sup>st</sup> Metropolitan Mortgage with Cover Letters.
- CFR Ex. 9 Respondent: Loan Officer Employment Agreement.
- CFR Ex. 9A Respondent: 1<sup>st</sup> Metropolitan Mortgage – Loan Fraud Policy.
- CFR Ex. 9B Respondent: 1<sup>st</sup> Metropolitan Mortgage – Quality Control – Statement of Policy.
- CFR Ex. 10 Respondent: Branch Manager Employment Agreement.
- CFR Ex. 10A Respondent: 1<sup>st</sup> Metropolitan Mortgage – Loan Fraud Policy.
- CFR Ex. 10B Respondent: 1<sup>st</sup> Metropolitan Mortgage – Quality Control – Statement of Policy.

The Respondent offered the following documents, which I admitted into evidence:

- Resp. Ex. 1 Email from the Respondent to Calvin Wink, August 17, 2009.
- Resp. Ex. 2 Email from Calvin Wink to the Respondent, August 17, 2009.

- Resp. Ex. 3 Email messages between Calvin Wink and Respondent, August 17 & 18, 2009.
- Resp. Ex. 4 Email from 1<sup>st</sup> Metropolitan Mortgage to the Respondent, December 30, 2008.
- Resp. Ex. 5 Email from the Respondent to B. Bush, September 1, 2009.
- Resp. Ex. 6 Email from the Respondent to Calvin Wink, September 14, 2009.
- Resp. Ex. 7 Email messages between the Respondent and Cardinal Financial, August 21 & 25, 2008.
- Resp. Ex. 8 Email message from 1<sup>st</sup> Metropolitan Mortgage to the Respondent, undated.
- Resp. Ex. 9 Email from Amy Cholewczynski of USA Home Loans to the Respondent, December 5, 2008, with stipulation sheet attached.
- Resp. Ex. 10 DU Underwriting Findings, November 25, 2008 (page 1 of 6 pages).
- Resp. Ex. 11 Email from the Respondent to Calvin Wink, September 14, 2009.
- Resp. Ex. 12 Email from the Respondent to Calvin Wink, September 14, 2009.
- Resp. Ex. 13 Internet loan search printout, September 30, 2008.
- Resp. Ex. 14 Email from the Respondent to Calvin Wink, September 16, 2009, with letter from the Respondent attached.
- Resp. Ex. 15 Letter from the District of Columbia, Office of Tax and Revenue and Real Property Taxes to the Respondent, September 22, 2008.

### Testimony

Calvin Wink, Jr., Certified Investigator for the CFR, [REDACTED] (Complainant [REDACTED]), and [REDACTED], Chief Compliance Officer for 1<sup>st</sup> Metropolitan Mortgage testified on behalf of the CFR. [REDACTED] testified by telephone. The Respondent testified on her own behalf, also by telephone.<sup>1</sup>

### FINDINGS OF FACT

Having considered the testimony and exhibits presented, I find the following facts by a preponderance of the evidence:

1. On January 1, 2007, the CFR issued the Respondent a Maryland mortgage originator license (License No.: 26-1582).
2. That license expired on December 31, 2009, and the Respondent has not yet submitted any renewal application.

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<sup>1</sup> On May 11, 2010, the Respondent filed with the OAH a hearing postponement request due to a scheduled medical procedure. That request was denied by the OAH on May 14, 2010 because the Respondent did not provide the necessary medical documentation. On May 26, 2010, the date of the scheduled OAH hearing, the Respondent filed an emergency hearing postponement request due to automobile problems. That request was denied and the hearing was conducted with the Respondent participating by telephone.

3. In April 2008 and at all times relevant to this matter, the Respondent was employed as a branch manager for Empire Equity Group, Inc., d/b/a 1<sup>st</sup> Metropolitan Mortgage (1<sup>st</sup> Metropolitan), located at 5855 Allentown Road, Suite 100, Camp Springs, Maryland, 20746.
4. 1<sup>st</sup> Metropolitan is a duly licensed Maryland mortgage lender and its services do not include establishment, advertising, promotion, or other solicitation of real estate investment services.
5. 1<sup>st</sup> Metropolitan did not authorize Respondent to collect any up-front or advance fees for loan applications.
6. In April 2008, Complainant [REDACTED] was referred to the Respondent for assistance in obtaining a mortgage.
7. The Respondent informed the Complainant [REDACTED] that she needed to make up-front payments for closing costs. The Complainant [REDACTED] issued three personal checks to the Respondent, totaling \$4,000. The first check, dated May 19, 2008, was for \$1,000. The second check, dated June 2, 2008, was for \$2,000. The third check, dated July 16, 2008, was for \$1,000. One of the checks had a notation "application fee," and another check had the notation "Loan #MD0048080500807."
8. All three checks were deposited in the Respondent's personal bank account.
9. The Respondent used the Complainant [REDACTED] "deposit" to purchase or attempt to purchase real estate as investments for herself.
10. The Respondent did not inform the Complainant [REDACTED] that she was using the deposits for real estate investments.
11. On or about June 11, 2009, the Complainant [REDACTED] filed a consumer complaint with the CFR, alleging that the Respondent had defrauded her.
12. On August 10, 2009, 1<sup>st</sup> Metropolitan issued Complainant [REDACTED] a reimbursement check for \$4,000.



13. On April 27, 2009, [REDACTED] (Complainant [REDACTED]) filed a complaint with the CFR, alleging that she issued a payment of \$400 to the Respondent for a mortgage application fee and the Respondent failed to take any action on behalf of Complainant [REDACTED]. The Respondent deposited the funds into her personal account but took no action. After an initial investigation into the matter, 1<sup>st</sup> Metropolitan refunded \$400 to [REDACTED].
14. On July 30, 2009, the CFR issued a subpoena compelling the Respondent to appear and produce all necessary documents at a CFR hearing on August 18, 2009. On August 18, 2009, the Respondent telephoned Mr. Wink, the CFR investigator, and informed him that she would be unable to appear due to the death of her mother.
15. On September 10, 2009, Mr. Wink interviewed the Respondent regarding her involvement with the Complainants.

### DISCUSSION

The CFR conducted an investigation into the business activities of the Respondent and, as a result of the investigation, the CFR has alleged that the Respondent violated specific provisions of the MMOL. Based on the alleged violations, the CFR seeks to revoke the Respondent's Maryland mortgage originator license (License No.: 26-1582). Additionally, the CFR seeks to impose a \$5,000 civil penalty for each of the Respondent's alleged violations.

The CFR, as the moving party on the charges, has the burden of proof, by a preponderance of the evidence, to demonstrate that the Respondent violated the law or regulations. If the CFR meets its burden, the Commissioner may revoke the Respondent's license and impose a civil penalty. The relevant regulations are: Md. Code Ann., Fin. Inst. §§ 11-615(a)(3), 11-615(a)(4), and 11-615(a)(5). These sections provide:

§ 11-615. Suspension or revocation of license; cease and desist orders; civil penalties.

(a) Subject to the hearing provisions of § 11-616 of this subtitle, and except as

provided in subsection (f) of this section, the Commissioner may suspend or revoke the license of any licensee if the licensee:

- ...
- (3) In connection with any mortgage loan or loan application transaction:
    - (i) Commits any fraud;
    - (ii) Engages in any illegal or dishonest activities; or
    - (iii) Misrepresents or fails to disclose any material facts to a person entitled to that information;
  - (4) Violates any provision of this subtitle, any regulation adopted under this subtitle, or any other law regulating mortgage lending or mortgage origination in the State; or
  - (5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly.

The Commissioner alleges that Respondent defrauded clients of 1<sup>st</sup> Metropolitan, for whom Respondent provided loan origination services, by requiring them to make up-front payments for the loan origination and brokering process and then using those funds for her personal investments, all without the knowledge or approval of the clients.

Calvin Wink, Jr., the supervisory investigator for the Enforcement Unit of the CFR, conducted the investigation and testified at the hearing on behalf of the CFR. Mr. Wink testified that during the course of his investigation, the Respondent was uncooperative in attending interviews and furnishing necessary documentation. The Respondent was summoned to appear before the CFR on August 18, 2009 with all documents relevant to the matter. On that day, the Respondent telephoned Mr. Wink and informed him that she would be unable to appear due to the death of her mother. According to Mr. Wink, as of September 2, 2009, the Respondent had not yet answered or responded to Mr. Wink's telephone calls. On September 10, 2009, Mr. Wink was able to conduct an interview with the Respondent, but she still failed to provide the documents required by the subpoena.

Complainant [REDACTED] testified that she was referred to the Respondent for assistance in obtaining a mortgage loan. [REDACTED] stated that her intent was to purchase a home for use as a

primary residence, and not as an investment property. According to the Complainant, the Respondent instructed her that the process for securing an FHA loan had changed and the Complainant would need to provide, in advance, \$4,000 for closing costs. The Respondent advised that these funds were necessary to complete the loan process. The Complainant stated that she received letters of loan preapproval but never successfully obtained a loan through the Respondent. Further, the Complainant stated that the Respondent agreed to provide her with a real estate agent, but did not do so. The Complainant selected real estate agents on her own but they had difficulty getting responses from the Respondent.

Concerning the Complainant [REDACTED], the documentary evidence shows that the Respondent requested and received from [REDACTED] an up-front "application fee" but took no action on [REDACTED] behave. Documentation from 1<sup>st</sup> Metropolitan Mortgage and testimony from Ms. Crider show that 1<sup>st</sup> Metropolitan does not permit its employees to collect up-front or advance fees from loan applicants. 1<sup>st</sup> Metropolitan reimbursed Complainant [REDACTED] the \$400 she had paid to the Respondent. The Respondent suggested to 1<sup>st</sup> Metropolitan that it could take money from her reserve account to cover the reimbursement. There is no evidence before concerning what the Respondent did with the \$400 paid by [REDACTED] and therefore I find no violations concerning the [REDACTED] matter.

The [REDACTED] matter is a different story. The Respondent's arguments in response to the CFR's evidence regarding her perpetration of fraud concerning the [REDACTED] matter were unconvincing. According to the Respondent, the Complainant was referred to her and was interested in investing in foreclosures, tax sales, etc. The Respondent stated that the \$4,000 given to her by the Complainant was to be held as a down payment on such investments. The Respondent offered no corroborating evidence to support her assertion that the Complainant had ever intended to engage in real estate investment. Furthermore, the loan reference number

included on one of the Complainant's checks indicates that the funds were intended for the procurement of an FHA loan, and not as a down payment on a future investment. The Respondent testified, again unconvincingly, that she did not know why such a notation was included on this check.

Melissa Crider, Chief Compliance Officer for 1<sup>st</sup> Metropolitan Mortgage, testified that 1<sup>st</sup> Metropolitan Mortgage's business services did not include real estate investment programs. According to Ms. Crider, 1<sup>st</sup> Metropolitan never authorized the Respondent to engage in any establishment, advertising, promotion, or other solicitation of such investment programs to its consumers. Further, Ms. Crider testified that the Respondent was never authorized by 1<sup>st</sup> Metropolitan to collect up-front fees or advance fees for loan applications. According to Ms. Crider, collection of such fees would be in violation of company policy, industry standards, and appeared to be in violation of Maryland law. This contention was supported by 1<sup>st</sup> Metropolitan's Quality Control Statement of Policy and Loan Fraud Policy documents.

During the hearing, the Respondent suggested that she had documents that would support her position. She was allowed time to provide such documents and, on June 3, 2010, she submitted several documents (admitted as her exhibits). The Respondent's documents, however, provide no corroboration that the Complainant ever knew of or agreed to the use of her payments for any investments. In fact, the documents never mention the Complainant. That one of the checks provided to the Respondent by the Complainant has the notation "application fee" and another check has the notation "Loan #MD0048080500807" clearly corroborate the Complainant's testimony that her payments were for loan applications and not any real estate investments. As mentioned, the Respondent had no explanation for these notations.

I find that the Respondent is simply not credible in suggesting that the Complainant entered into an agreement to join with the Respondent to invest in real estate. The Respondent

has consistently avoided answering requests from the CFR and providing documents in spite of considerable time to do so. When she finally did provide documents, they failed to show any agreement between her and the Complainant concerning the use of the Complainant's money for real estate investments. Additionally, the Respondent has failed to explain why she would be using her position with 1<sup>st</sup> Metropolitan Mortgage to conduct or solicit real estate investments, a practice clearly against 1st Metropolitan Mortgage policy. Finally, the Respondent had no response to the allegations that up-front payments for mortgage loans are not permitted by the FHA.

In contrast, the Complainant testified quite credibly that she never entered into any agreement with the Respondent to join her in real estate investment. In addition, Ms. Crider testified quite credibly that the Respondent's actions were not in accord with her company's policy and that the Respondent was aware of this.

The Respondent used her position to obtain money from the Complainant for purposes other than as intended by the Complainant and for the personal benefit of the Respondent. Such actions constitute fraud, dishonesty, misrepresentation of material facts and demonstrate unworthiness, bad faith, all of which indicate that the business of the Respondent has not been or will not be conducted honestly. Md. Code Ann., Fin. Inst. §§ 11-615(a)(3), 11-615(a)(4), and 11-615(a)(5).

### **Sanctions**

The CFR is seeking civil penalties against the Respondent and revocation of her license. The CFR is entitled to suspend or revoke an individual's Maryland mortgage originator license and/or impose civil penalties pursuant to section 11-615 of the Financial Institutions Article.

Section 11-615 provides, in relevant part:

(a) Subject to the hearing provisions of § 11-616 of this subtitle, and except as provided in subsection (f) of this section, the Commissioner may suspend or revoke the license of any licensee.

...

(c)(1) The Commissioner may enforce the provisions of this subtitle, regulations adopted under this subtitle, and the applicable provisions of Title 12 of the Commercial Law Article by:

...

(ii) Imposing a civil penalty not exceeding \$5,000 for each violation.

...

(e) In determining the amount of financial penalty to be imposed under subsection (c) of this section, the Commissioner shall consider the following factors:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and the industry involved;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

I have found that the Respondent violated §§ 11-615(a)(3), 11-615(a)(4), and 11-615(a)(5) in her handling the [REDACTED] case. The CFR has argued that an appropriate sanction would be \$5,000 for each violation, i.e., \$5,000 for the [REDACTED] case and \$5,000 for the [REDACTED] case. Having found no violations concerning the [REDACTED] matter, sanctions in that case are not warranted. I accept the CFR's argument that this is a significant case of fraud and misrepresentation and that a significant civil penalty is appropriate. The Respondent engaged in a dishonest and fraudulent scheme to obtain and use the Complainant's money for the Respondent's personal benefit. Furthermore, when called to task during the investigation she avoided meeting with the investigator and provided questionable excuses for doing so. She attempted to put off a reckoning even longer by making a questionable request for postponement of the hearing in this matter. She failed to provide any documentation until after the hearing in

this matter and then her documents failed to support her position. Finally, aside from suggesting to 1<sup>st</sup> Metropolitan that it could use money in her reserve account for reimbursements, the Respondent has made no effort Complainant [REDACTED] or 1<sup>st</sup> Metropolitan Mortgage whole. All of this demonstrates to me a complete lack of good faith and an attempt to continue obfuscating.

Finally, the actions of the Respondent certainly do not enhance the faith of the public in the mortgage loan industry and this case is particularly significant given the recent and current economic situation and the events leading to them. I find that a civil sanction of \$5,000 and the revocation of the Respondent's license are appropriate sanctions in this case.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated Md. Code Ann., Fin. Inst. §§ 11-615(a)(3), 11-615(a)(4), and 11-615(a)(5), by engaging in the fraudulent conversion of Complainant [REDACTED] funds for her personal use. I conclude as a matter of law that the Respondent is subject to a civil penalty and a revocation of her Maryland mortgage originator license for these violations. Md. Code Ann., Fin. Inst. § 11-615 (Supp. 2010).

### RECOMMENDED ORDER

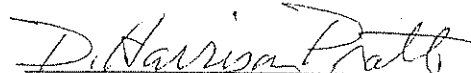
I RECOMMEND that the CFR:

Enter a final Order that:

1. The Respondent's Maryland mortgage originator license be revoked;
2. The Respondent pay to the Maryland Commissioner of Financial Regulation a civil penalty of \$5,000; and

3. The records and publications of the CFR reflect this decision.

July 21, 2010  
Date Decision Mailed

  
D. Harrison Pratt  
Administrative Law Judge

Doc# 114227